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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/610,495

06/30/2003

Wayne Y. Menzie

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EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3766

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/610,495

Applicant(s)

MENZIE ET AL.

Examiner

Frances P. Oropeza

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 6/30/03 (Initial Filing).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/30/03.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilk (US 5437278).

Wilk discloses a medical diagnosis system comprising a plurality of collection devices (20, 66a-66n) for respiratory monitoring and testing/ a predetermined breathing regimen, each collection device comprising a display (74) showing data/ waveforms and standards, an interface (26, 72), and a processing center (fig. 2; 64, 60b, 62b) to provide test results (abstract; figures 1, 2, 4; col. 1 @ 51-64; col. 3 @ 3-22; col. 5 @ 4-20; col. 6 @ 39-63; col. 8 @ 1-9). The telemetry system of Wilk is noted to provide or is able to provide the intended use of claim 11.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilk (US 5437278) in view of Kraf et al. (US 5299119). As discussed in the paragraph 2 of this action, Wilk discloses the claimed invention except for a monitor to access heart rate variability, the test being the Valsalva test or the E/I test.

Kraft et al. teaches cardiac testing using a monitor to access heart rate variability, the test being the Valsalva test or the E/I test for the purpose of evaluating the function of the automatic nervous system. The Valsalva test relates to breath pressure versus time, hence the cardiac waveform shows the impacts of breath pressure versus time. The E/I test relates to breath volume versus time, hence the cardiac waveform shows the impacts of breath volume versus time. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used a monitor to access heart rate variability, the test being the Valsalva test or the E/I test in the Wilk system in order to provide valid test results that assess the autonomic system function to detect patients at risk for sudden death due to changes in autonomic tone (abstract; col. 1 @ 35-40; col. 1 @ 56 – col. 2 @ 13; col. 3 @ 14-27; col. 7 @ 3-30; col. 8 @ 13-25; col. 9 @ 3-20).

5. Claims 15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (US 6319200) in view of Wilk (US 5437278).

Lai et al. teach the remote monitoring of multiple medical parameter monitoring devices (12)/ collection devices/ computers (accepted to have a processor) by a central monitoring system (14)/ processing center, the centers receiving and analyzing data. A plurality of monitors are located throughout the facility and are interconnected by a plurality of communication links (figure 1; col. 2 @ 31-54; col. 3 @ 16-18, 47-64; col. 4 @ 55-64).

As discussed in the previous paragraph of this action, Lai et al. disclose the claimed invention except for

- the processing center providing test results on the physiological data, and
- multiple processing centers.

As to test results, Wilk et al. teach a diagnosis system a using processing center to provide test result on physiological data for the purpose of providing the patient and/ or user with test and diagnostic information. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided test results on the physiological data from the processing center in the Lai et al. system in order to enable the patient to be an informed participant in his health care and to enable the user/ caregiver to know and accurately treat the patient's condition (abstract; col. 1 @ 51-64; col. 5 @ 1-3).

As to multiple processing centers, Wilk et al. teach diagnosis system configuration using multiple processing centers for the purpose of enable system monitoring of an individual that is mobile within an area that is too large to be covered by a single processing center. It would have been obvious to one having ordinary skill in the art at the time of the invention to multiple processing centers in the modified Lai et al. system in order to provide comprehensive monitoring for a patients in large facilities (abstract; figure 4; col. 1 @ 51-64; col. 5 @ 1-3).

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai et al. (US 6319200) in view of Wilk (US 5437278) and further in view of Mahany et al. (US 5949776).

As discussed in paragraph 5 of this action, modified Lai et al. disclose the claimed invention except for the device processor randomly selecting a processing center.

Mahany et al. teach communication system configurations using peripheral devices/ collection devices that randomly select a processing center for the purpose of managing communication flow in high-density transmission environments. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided device processor randomly selecting a processing center in the modified Lai et al. system in order to enable communication flow that efficiently and effectively uses the network and that minimizes the battery usage for communication purposes (col. 2 @ 2-6, 44-51; col. 3 @ 65 – col. 4 @ 20; col. 4 @ 47-56; col. 17 @ 37-47).

### *Specification*


7. The specification is objected to because on page 8, line 27 the database is assigned the reference numeral “34”, but this reference numeral is not found in the figures.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Frances P. Oropeza  
Patent Examiner  
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4/2/06

  
Robert E. Pezzuto  
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